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I hereby certify that this correspondence (along with any paper referred to as being attached or enclosed) is being submitted *via* the USPTO EFS Filing System on the date shown below to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Date: February 4, 2009/Karla D. Osolin/

Karla D. Osolin

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:

Applicant(s): Kamal Jain, *et al.*

Examiner: Nathan Erb

Serial No: 10/782,687

Art Unit: 3628

Filing Date: February 19, 2004

Title: SYSTEMS AND METHODS FOR MODELING APPROXIMATE MARKET
EQUILIBRIA

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Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

**PETITION TO REVIVE FOR UNINTENTIONAL DELAY UNDER 37 C.F.R. §1.137(b) AND
REQUEST FOR WAIVER OF FEE UNDER 37 C.F.R. §1.17(m)/
SUBMISSION PURSUANT TO 37 CFR §1.114**

Dear Sir:

A Submission Pursuant to 37 CFR §1.114 is being filed concurrently herewith.

Due to a Patent Office error, the above-identified application became statutorily abandoned for failure to timely reply to a Final Office Action dated July 14, 2008. Applicants, through their undersigned representative, hereby request revival of the subject application and waiver of the petition fee for the following reasons.

Applicants' representative received a Final Office Action dated July 14, 2008. Applicants' representative submitted a complete, timely Reply to the Final Office Action on August 7, 2008, which was believed to place the application in condition for allowance. Thus, the complete Reply was submitted within two months of the date of the Final Office Action. Applicants' representative received no further correspondence from Examiner Erb until February 2, 2009, when an Advisory Action was mailed. In the Advisory Action, the rejections of claims 1-7, 11-16, 20 and 23-26 were maintained. In a telephonic communication with Examiner Erb's Supervisor, John Hayes upon receipt of the Advisory Action (on February 2, 2009), it was indicated by the Supervising Examiner that the delay with regard to the issuance of the Advisory Action was an error on the part of the Patent Office. The Reply to the Final Office Action filed on August 7, 2008 (which was filed through the USPTO's EFS Filing System), was inadvertently delayed and not transmitted to Examiner Erb until January 26, 2009, *after* the statutory deadline of January 14, 2009. Examiner Erb then issued the resultant Advisory Action on February 2, 2009. Therefore, it is believed that the statutory abandonment of the subject application is due to a Patent Office error for failure to timely transmit the Reply to Final Office Action (filed August 7, 2008) to Examiner Erb.

The U.S. Patent and Trademark Office states that MPEP §711.03(c) makes clear that an amendment after final rejection will not operate to avoid abandonment of the application in the absence of a timely and proper appeal, when the applicant simply permits the maximum extendable statutory period for reply to expire while awaiting a notice of allowance or other action. However, MPEP §711.03(c) does not make clear that an amendment after final rejection will not operate to avoid abandonment, MPEP §711.03 (c) merely states:

b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require...

Accordingly, the amendment after final rejection filed on August 7, 2008 was a complete and proper reply to the final Office Action. Furthermore, MPEP §706.07(f) states that replies after final

should be processed and considered promptly by all Office personnel. As applicants' representative did not receive an advisory action until *after* the statutory deadline, the reply after final was not processed and considered promptly by the U.S. Patent and Trademark Office.

Even if an amendment after final rejection will not operate to avoid abandonment, some responsibility for the abandonment should be shared by the U.S. Patent and Trademark Office out of principles of fairness. Applicants' representative timely filed an amendment after final rejection and relied on the Examiner to make a timely response. Due to such reliance, the application went abandoned when the advisory action was received *after* the statutory deadline. Accordingly, applicants' representative is filing the required reply in the form of an RCE, the RCE fee, an amendment, and an adequate statement of unintentional delay. All applicants' representative is now requesting is simply waiver of the revival fee. The principles of fairness dictate that partial blame should rest with the Examiner (USPTO), and since applicants' representative has fulfilled the requirements of filing the RCE, the RCE fee, amendment, and statement of unintentional delay, the U.S. Patent and Trademark Office should at least waive the fee for reviving the application.

In view of at least the above, it is respectfully requested that the fee for the Petition to Revive be waived. Since the above-identified utility application was filed on or after June 8, 1995, no terminal disclaimer is required.

Applicants' representative respectfully submits that the entire delay in filing the required reply, from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR § 1.137(b), was unintentional.

In the event that waiver of the petition fee is not granted, a credit card payment form is filed concurrently herewith in connection with all fees due regarding this document. In the event any additional fees may be due and/or are not covered by the credit card, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1063 [MSFTP526US].

Attached herewith is a submission pursuant to 37 CFR §1.114, filed concurrently with an RCE, for the above-identified patent application.

Respectfully submitted,

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